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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ADRIAN RISKIN Petitioner, v. THE ACCELERATED SCHOOLS, Respondents.	CASE NO.: 19STCP05135 **RESPONDENT THE ACCELERATED SCHOOLS OPPOSITION TO PETITIONER ADRIAN RISKIN'S PETITION FOR WRIT OF MANDAMUS** *[Assigned to Mary H. Strobel; Dept. 82 for all purposes]* Date: March 23, 2021 Time: 9:30 a.m. Dept.: 82 Petition and Complaint filed: December 3, 2019

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I. INTRODUCTION

Respondent THE ACCELERATED SCHOOLS ("TAS" or "Respondent") hereby files this Memorandum of Points and Authorities in opposition to Petitioner ADRIAN RISKIN's ("Petitioner" or "Riskin") Petition For Writ Of Mandamus and requests that the Court deny the relief sought by Petitioner in this action.

Respondent TAS is a twenty five year old public charter school, pursuant to Education Code section 47600 et seq., that is serving over 1,800 predominately low income minority students within the boundaries of the Los Angeles Unified school District. Petitioner, for some reason, has targeted TAS for public criticism and barraged TAS with public records act requests.

Petitioner received over 55,000 pages from TAS in response to six Public Records Act ("PRA") requests. Yet, as set forth herein, he misrepresents Respondent's efforts comply with his voluminous PRA requests and complains that Respondent improperly withheld thirteen emails that he has already received from other resources – each of which is exempt from disclosure under the PRA. During settlement discussions prior to the commencement of the parties' briefing, TAS asked Petitioner to share the emails he claimed to have obtained from collateral sources so TAS's counsel would be able to engage in a good faith evaluation of potential legitimate issues or clarify the grounds for exemption from disclosure. Instead of participating in this reasonable and rational option, Petitioner elected (in a manner consistent with his established track record) to just share two documents (that TAS then explained to Petitioner why they were not produced) and proceeded to play a game of "gotcha" by presenting the other documents to the Court first by attaching them to Petitioner's Opening Brief.

Petitioner claims that the Respondent's withholding of the disputed thirteen emails discussed herein proves that TAS has not performed an "adequate search" responsive to each of Petitioner's six PRA requests. This is simply untrue. All thirteen emails that Petitioner cites are properly withheld pursuant to the deliberative process privilege held to apply to such requests by the California Supreme Court as set forth herein.

Finally, Petitioner is on the warpath against public charter schools, and seemingly against TAS, in particular. He has served numerous PRA requests on TAS and he touts in a fantastical and

braggadocios manner his exploits crusading against charter schools in postings that appear on the blog page that he maintains under an alias. (See, e.g., Screen Shots of Petitioner's blog attached as Exhibit G to the accompanying Declaration of Jeffrey L. Anderson.) In his blog posts Petitioner engages in cruel and meanspirited personal attacks against charter school leaders and educators.

But, in short, based on his erroneous legal position as to the thirteen emails that he asserts, wrongly, should have been produced, Petitioner wants to instigate the brand of inquisition that this Court should not permit. In this case Petitioner has failed to show TAS improperly exempted any records among the over 55,000 that he requested and received. Therefore, this Court should use its discretion to deny the Petitioner's motion in order to stop Petitioner's specious claims deny Petitioner's request that it engage in an in-camera review of other exempted documents that accomplish nothing more than to perpetuate Petitioner's meritless and mercenary claims against TAS – too great expense of a public school. As set forth herein, TAS submits that the Court should deny Petitioner's Writ of Mandate in its entirety.

II. FACTUAL BACKGROUND

The six (6) Public Records Act ("PRA") requests that Petitioner has placed at issue in this litigation, fall on dates between January 19, 2019 and April 6, 2019, and constituted a veritable blizzard of requests that fell on TAS to respond to during a tumultuous time of staff turnover at TAS involving employees whose job it was to receive, review, and respond to PRA requests. (Declaration of Vincent Shih ("Decl. Shih"), ¶ 3, filed herewith.) Despite the difficulties in gathering the records, as set forth in the Declaration of TAS Chief Financial Officer, Vincent Shih, filed herewith, TAS engaged in a through, exhaustive, rigorous, and extended effort to review the records that were ultimately provided to Petitioner totaling more than 55,000 pages of records.

Prior to and from January 19, 2019 to February 28, 2019, TAS co-founder Johnathan Williams was the Chief Executive Officer ("CEO") of TAS. During his tenure as CEO, Mr. Williams took the laboring oar in responding to document requests to TAS from the public. Grace Lee-Chang ("Ms. Chang") served as Interim CEO beginning March 15, 2019. And, on July 1, 2019, Ms. Chang was appointed CEO of TAS. (Decl. Shih, ¶ 4.)

Prior to and from January 19, 2019 to May 17, 2019, Asha Marshall was the Human Resources

Manager at TAS. During her tenure at TAS it was part of Ms. Marshall's job to do the initial review of PRA requests and take appropriate steps to respond to them. As acknowledged in Petitioner's Opening Brief and Petition for Writ filed herein on December 3, 2019, Petitioner acknowledges that TAS did in fact formally respond to three of Petitioner's PRA requests at issue in this litigation. (See, "Petition for Writ," Exs. A, B, and C; and Decl. Shih, ¶ 5.)

Additionally, the six PRA requests made by Petitioner to TAS that are at issue in this litigation were not the only PRA requests received by TAS from Petitioner during the relevant timeframe that go unmentioned by Petitioner. (Decl. Shih, ¶ 6.)

On or about May 1, 2019, right before Ms. Marshall left her employment as Human Resources Manager at TAS, she provided Vincent Shih, TAS's Chief Financial Officer, with information regarding Plaintiff's multiple PRA requests and requested his assistance. That was the date that Mr. Shih first became aware of the PRA requests from Petitioner. (Decl. Shih, ¶ 7.)

In reviewing emails between former TAS CEO Johnathan Williams, Asha Marshall, and Petitioner regarding the PRA requests forwarded to Mr. Shih by Ms. Marshall, Mr. Shih discovered that Mr. Williams had responded to at least one prior PRA request from Petitioner that Petitioner fails to mention in the instant legal proceeding, on April 5, 2019. (*See* Exhibit A to Decl. Shih, ¶ 8, filed herewith.)

Originally, in early April of 2019, Ms. Marshall mistakenly believed that Petitioners' PRA requests were "spam." And in that timeframe, former TAS CEO Johnathon Williams and Ms. Marshall had sought out legal advice from the law firm of Liebert Cassidy & Whitmore to assist TAS in responding to Plaintiff's PRA requests and for legal counsel aiding Ms. Marshall in preparing a formal response letter to Plaintiff regarding Petitioner's PRA request dated March 24, 2019. (Decl. Shih, ¶¶ 8, 9, and 10.)

On April 10, 2019, Ms. Marshall emailed to Petitioner TAS's response letter regarding for the request dated March 24, 2019, telling Petitioner that TAS only became aware as of April 10, 2019 that Petitioner's requests were made pursuant to the Public Records Act because that was the first time that Petitioner had actually referenced the PRA in his requests. (*See* Exhibit B to Decl. Shih, ¶ 11.)

Petitioner responded to Ms. Marshall's initial response on April 11, 2019 by thanking her for

"finally realizing that my CPRA request was a CPRA request" and thanking her "for your ultimate realization!" (*See* Exhibit C to Decl. Shih, ¶ 12.) Thereafter, Ms. Marshall continued her discussions with legal counsel regarding further action required to properly respond to Petitioner's PRA requests. (Decl. Shih, ¶ 13.)

Moreover, as attested in the accompanied declaration of TAS's CFO, Vincent Shih, on or about May 30, 2019, former CEO Johnathon Williams emailed Petitioner to tell him that Mr. Williams no longer "had access to campus" and that Ms. Marshall no longer worked at TAS. (*See* Exhibit D to Decl. Shih, ¶14.) Petitioner replied in an email to Mr. Williams on May 30, 2019, berating him for being "disorganized" and not following the law. (*See* Exhibit E to Decl. Shih, ¶ 14.)

TAS continued its effort to work with the law firm of Liebert Cassidy Whitmore up through August of 2019. However, as attested in the Declaration of Vincent Shih, he learned on or about August 2, 2019, that the attorney assigned to the TAS PRA matter had left that law firm. (*See* Exhibit F to Decl. Shih, ¶ 15.)

Rather than acknowledge the travails and turbulence that TAS was subjected to during this period, and despite TAS's good faith efforts to comply with the PRA set forth above, Petitioner forged ahead heedlessly with litigation that he filed herein on December 3, 2020.

After TAS was served with the Petition and Complaint herein, TAS immediately contacted Young, Minney & Corr LLP. Shortly thereafter, with the guidance of legal counsel, TAS tasked their IT staff to search all emails, servers, laptops etc. for all key words included in Petitioner's six requests. This resulted in hundreds of thousands of records. The TAS and legal review of these documents for confidential/exempt information took months. (*See* Decl. Shih, ¶ 16.)

And Petitioner's transparent gamesmanship and gambits against TAS continued after the filing of the Petition for Writ of Mandate on December 3, 2019. Specifically, on January 12, 2021, Petitioner's counsel, Robert Skeels, emailed a letter to TAS's present counsel asserting that Petitioner, despite receiving over 55,000 records from TAS, was "in possession of dozens of specific records, from collateral sources, that TAS either is or should be in possession of" using that allegation to also assert that "their absence from the records production is seemingly dispositive that TAS did not exercise due diligence and conduct a thorough search for responsive records." (Email from Robert

Skeels to TAS's counsel, Wayne K. Strumpfer, dated January 12, 2021 (with its pdf.doc attachment) that is attached as Exhibit N to the Declaration of Robert D. Skeels ("Skeels Decl.") in support of Petitioner's Memorandum of Points and Authorities in Support of Petition for Writ of Mandate.)

In a good faith effort to defuse the elaborate game of "gotcha" being orchestrated by Petitioner against TAS regarding its alleged failure to fully respond to the PRA requests at issue, on January 13, 2021, counsel for TAS sent an email to Petitioner's counsel requesting that Petitioner disclosure the "dozens" of allegedly improperly withheld documents so TAS could determine if the documents were: (1) in the records of TAS; (2) being withheld by TAS as exempt; or (3) are indeed responsive, non-exempt, records and if so, provide an opportunity for TAS to attempt to determine how it happened that those particular documents were not found and disclosed to Petition in TAS's production of records on October 30, 2020. (*See* Exhibit H, Declaration of Jeffrey L. Anderson, filed herewith.) Petitioner refused this reasonable request and elected to move forward with this writ of mandate.

III. LEGAL ARGUMENT

As set forth above, Petitioner argues by assuming without question that the thirteen emails placed at issue in this proceeding, each of which is attached to Exhibit A (RISKIN0001 through RISKIN0045) to the Declaration of Adrian Riskin in Support of Memorandum of Points and Authorities in Support of Petition for Writ of Mandate, are documents that should have been produced by TAS as non-exempt documents pursuant to the Public Records Act. All thirteen emails[1] involve communication between Respondent, local charter schools, and the California Charter Schools Association ("CCSA"). CCSA is a charter school membership organization that provides legislative, legal and operational support to charter schools[2]. Petitioner argues, based on that incorrect assumption, this Court should conduct an in camera review of "all" documents withheld based on any exemptions. As set forth herein, Petitioner's argument is without legal merit as the 19 records were properly exempted from disclosure pursuant to the Deliberative Process privilege. Petitioner's meritless argument is simply an effort to protract and prolong this litigation.

[1] It should be noted that Government Code Section 6254.5 creates a waiver of the exemptions when a public agency discloses a certain public record. However, this law applies to the specific public agency. Therefore, the fact that another charter school may have disclosed the thirteen emails at issue herein to the Petitioner does not create a waiver under Government Code Section 6254.5 for TAS.

[2] https://www.ccsa.org/what-we-do

A. The Thirteen Placed at Issue by Petitioner are Exempt From Disclosure Under the Deliberative Process Privilege.

The deliberative process privilege to the California Public Records Act is derived from the public interest exemption, which provides that a public agency may withhold a public record if it can demonstrate that "on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." (*Times Mirror Company v. Superior Court* (1991) 53 Cal.3d 1325, 1338.) The deliberative process exemption addresses the important public policy concern that public officials having frank discussion of legal or policy matters might be reticent if subject to public scrutiny through release of public records. It also supports the idea that access to an array of opinions and the freedom to seek many points of view, to exchange ideas, and to discuss policies in confidence are essential to effective governance. (Ibid.). California courts allow the exemption or privilege to protect communications (for example, email exchanges) to decisionmakers prior to a decision being made. (*Ibid.*; *see also* Title 5 of United States Code, Section 552(b)(2).)

Courts have held that a purely factual document is exempt from public disclosure if it is "related to the process by which policies are formulated" or "inextricably intertwined" with "policy-making processes." (*Jordan v. United States Dept. of Justice* (D.C. Cir. 1978) 591 F.2d 753, 774; *Ryan v. Department of Justice* (D.C. Cir. 1980) 617 F.2d 781, 790.) The court's focus should be less on the nature of the records sought and more on the effect of the release of the records. (*See Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at p. 1338.)

Although the deliberative process exemption is derived from the federal Freedom of Information Act, the California Supreme Court applied it when it determined the Governor's appointment calendar and schedule were not disclosable under the Public Records Act. (*Id*. at p. 1338.) Many California Courts have noted that the Public Records Act was modeled on the Freedom of Information Act and therefore, the deliberative process privilege applies in California. (*Id.*; *see also County of Los Angeles v. Superior Court* (*Axelrad*) (2000) 82 Cal.App.4th 819, 825.) The California Supreme Court reasoned that disclosure could inhibit the broad spectrum of people and viewpoints the Governor needs to effectively govern. (*Id*.)

In *Labor & Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12, the

California Court of Appeal addressed the "delicate balance of open government principals enshrined in" the Public Records Act and "the need for confidentiality in the deliberative process of drafting legislation as safeguarded by the deliberative process privilege." (*Id*. at p. 16.) In the *Labor & Workforce* case, the Public Records Act request was to the California Labor & Workforce Development Agency for emails regarding Assembly Bill 1513 ("AB 1513"), a bill focusing on wage and compensation standards. The trial court ordered the Labor & Workforce Development Agency to produce an index of the exempted emails that included general subject matter, the author and recipient(s), and the nature of the claimed exemption to justify the withholding of the emails. (*Id*. at p. 17.) The public agency petitioned the appellate court to prevent disclosure of the author and recipient(s) of the emails because parties communicated confidentially with the public agency in formulating AB 1513. On appeal, the Court, citing the *Times Mirror Co*. case, directed the trial court to vacate its order as the disclosure of the emails were protected by the deliberative process and attorney work product privileges. (*Id*. at p. 31.)

When the deliberative process privilege exists, courts must still determine if the public interest in nondisclosure "clearly outweighs" the public interest in disclosure. (Government Code Section 6255.) Weighing the public interest served in not disclosing the record and the public interest in disclosure has been described by courts as a balancing test. (*See CBS Broadcasting, Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, 908.) Government Code Section 6255 does not identify specifically the public interests that might be served by non-disclosure, but such interests may be inferred from the exemptions found in the list of exemptions outlined in Government Code Section 6254 and the deliberative process privilege found by the California Supreme Court in the *Times Mirror Company* case.

"The deliberative process privilege is grounded in the unromantic reality of politics." (*Times Mirror Company v. Superior Court, supra*, 53 Cal.3d at p. 1345.) The privilege is based on the understanding that if the public and the public agency were entitled to exactly the same information, neither would likely receive it. "Politics is an ecumenical affair; it embraces persons and groups of every conceivable interest." (*Id*.) To disclose every meeting of a Governor (much like disclosing every email between charter schools and its statewide lobbying and advocacy organization the California

Charter School Association) and expect decisions and the process of making decisions to function effectively, "is to deny human nature and contrary to common sense and experience." (*Id*.)

Charter schools function as nonprofit public benefit corporations that are public agencies. (CITATION – 47604 and Wilson v. SBE (add quotation that charter school board members sit in a similar position of school district board members) Their main function, of course, is to educate California public school students. TAS operates three charter schools with a total population of over 1,800 students in downtown Los Angeles. The Accelerated Schools are each chartered by the Los Angeles Unified School District ("LAUSD"). In order to function effectively as public schools, The Accelerated Schools must make political decisions on whether to support or oppose legislation that effects the operation of the charter school, and whether to support or oppose certain proposed policies by the LAUSD Board of Directors. A review of the thirteen emails attached as Exhibit A to Petitioner's MPAs, reveals that each document in fact goes behind the deliberative process veil to reveal the inner workings and protected deliberations of TAS and CCSA. TAS submits that in order to make those political/critical decisions the charter school needs to be able to confer with its statewide legislative and advocacy organization the CCSA. And the fact that Petitioner obtained, without TAS's knowledge or consent, these protected documents from another "collateral source," as Petitioner represent, in no way abrogates TAS's right to invoke the deliberative process privilege now.

The clear rationale for why the deliberative process privilege is relevant to the thirteen emails at issue is highlighted by the fact that when Assembly Bill 1505 ("AB 1505") was first introduced in the California Legislature, it was considered to be "anti-charter school" by most in education. There was language making it much more difficult for charter schools to be renewed by chartering authorities and requirements uniquely aimed at charter schools to make operation of the schools much more complicated. The California Charter Schools Association assisted charter schools throughout California in making decisions regarding the legislation, eventually leading to a political compromise that reduced some of the negative impact on charter schools. Without the ability to have frank discussions with charter school officials, including executives at TAS, the effectiveness of the California Charter School Association and the ability of TAS to govern its public schools that serve approximately 2,000 students (of which nearly 96% are classified as low income) would be compromised.

The 19 documents (that are actually 13 emails, as seven are a chain of one email) that the Petitioner claims TAS improperly withheld clearly fall into the deliberative process privilege, and the public interest in nondisclosure clearly outweighs the public interest in disclosure. Specifically, all 19 documents include discussions regarding legislation or political approaches to working with LAUSD - both major functions of TAS in operating multiple charter schools and educating almost 2,000 students. The ability to have frank discussions between charter schools is important to the public and the ability to effectively operate public schools for California students. The Petitioner's historical access of public records from charter schools is typically used to defame and cynically make fun of educators (*See* Exhibit A to the Declaration of Jeffrey L. Anderson, filed herewith.) While Petitioner claims in his Opening Brief that his blog has been cited by the Los Angeles Times and others in order to persuade this Court to overestimate the public interest in disclosure of the emails in question, in actuality, Plaintiff's blog is complete with inflammatory and defaming comments about individuals, dishonest and inaccurate quotes of public officials and attorneys, and uncorroborated conspiracy theories. The public interest in such a blog is minimal at best while protecting the deliberative decision-making process for public school officials is in the best public interest.

Respondents now addresses each of the emails the Petitioner cites claiming The Accelerated Schools improperly withheld public records.

1. March 21, 2018, email from Cassy Horton re: Confidential/Please Read/Friday's Authorizing and Oversight Policy Meeting at CCSA

CCSA provided information about an upcoming meeting "focused on making student-centered updates to local charter authorizing and oversight policy…" The email discusses "policy changes that benefit all students." Clearly, based on the language of the email, this is an upcoming policy discussion regarding effective governance for charter schools. The email goes on to state what the meeting will entail, including but not limited to, strategies to 1) encourage LAUSD to "restart a Charter Schools Collaborative, and 2) work on policies and District Required Language ("DRL") in upcoming charters.

This is a communication of a decision maker before the decision has been made. (*Times Mirror Company v. Superior Court, Supra*, *at* 1338; 5 USC Section 552(b)(5).) It is clear the decision has not yet been made as Ms. Horton wrote: "Some information is still sensitive and changing" and it

was about a future meeting.

The effect of the records' release would expose the decision-making process in such a way as to discourage candid discussion with the agencies involved thereby undermining the charter school ability to perform functions. (*Id*. at p. 1342, citing *Dudman Communications v. Dept. of Air Force* (D.C. Cir. 1987) 815 F.2d1565,1568.) An email regarding negotiation strategies for charter schools with LAUSD is politically sensitive and the release of such a record would discourage such frank discussion between charter schools. The public interest of disclosing this email is minor. Considering the deliberative process privilege, what would be of public interest is the ultimate decision made by the CCSA in its negotiations with LAUSD -- a record that would be public if requested from LAUSD.

2. **April 11, 2018, email from Keith DellAquila re: URGENT REQUEST/Letters of Opposition to Harmful Legislation**

3. **April 11, 2018, email from Cassy Horton re: URGENT REQUEST Letters of Opposition to Harmful Legislation**

4. **April 12, 2018, email from Cassy Horton re: Reminder/Submit Letters to CCSA Today Opposing Charter-Killer Bill in Sacramento**

In these emails, staff members of the CCSA provide a "frank discussion" regarding legislation and strategies for opposing legislation. CCSA staff considers one of the bills to be "the biggest legislative threat to charter schools this session" and that it has been "amended for the worse." The email includes discussion such as "…now is the right time for us to fight back" and that SB 1362 "would allow for politically-motivated charter denials of even high-performing charters." Such discussions between charter schools should be in confidence for effective governance. (*Id.* at p. 1338; 5 USC Section 552(b)(5).) The legislation is still active at the time of the email, so the discussion is regarding current legislative activity.

These emails are clearly discussing strategy for legislative action – the exact type of email that the Court of Appeal found to be protected under the deliberative process privilege in *Labor & Workforce Development Agency v. Superior Court.* The effect of the records' release would expose the decision-making process in such a way as to discourage candid discussion with the agencies involved thereby undermining all charter schools ability to perform important governmental functions. (*Id*. at p. 1342; *Labor & Workforce Development Agency v. Superior Court, Supra* at p. 17.) The public policy behind non-disclosure is very strong – allowing government officials a chance to freely discuss

policies directly effecting the education of thousands of minority low income students in Los Angeles.

5. April 24, 2018 email from Keith DellAquila re: Authorizing and Oversight Policy Working Group Discussion.

6. April 25, 2018, email from Keith DellAquila re: Cancelled: Authorizing and Oversight Policy Working Group Discussion.

These emails mention the LAUSD search for a new Superintendent and potential strategies for charter schools and the policy implications of such an appointment that appeared at the time to be imminent. There is also discussion of a strategic "get out the vote" drive for the upcoming election. Again, these emails are regarding legislative policy prior to any decision being made and the non-disclosure of such communications allows for the frank and candid discussion between charter schools and their statewide political advocacy agent on these important political issues. The public policy behind non-disclosure is very strong – allowing government officials a chance to freely discuss policies directly effecting the education of thousands of students in Los Angeles.

The public interest of disclosing these emails is unclear. Perhaps Mr. Riskin believes he can, as he has done previously many times, use these emails to make fun of charter schools or to create some type of false narrative. However, Mr. Riskin's personal animosity toward charter schools does not equate to an important public interest. As mentioned previously, TAS and other charter schools are allowed to discuss operational and educational policy and political issues frankly if it involves their governmental function. Here, these emails clearly do just that.

7. May 22, 2018, email from Keith DellAquila re: Feedback Requested by May 29 - 2018 Oversight Survey

This email is addressed from a CCSA staff member to the "Oversight Policy Working Group" and it invites members to provide "feedback on the Confidential Draft 2018 Oversight Survey…" The email includes a link to the "Confidential Draft," invites "thoughts" on the document, and provides a list of questions "to consider for reviewing the Confidential Draft Survey." Additionally, the author of the email states: "This version is a draft, so we ask you to keep it confidential."

Again, the deliberative process privilege applies to this email based upon the policy holding of *Times Mirror Company v. Superior Court.(CITATION)* This email is about ongoing policy discussions that directly impact the operation of the public agency charter schools. The Confidential Draft Oversight Survey is directly related to the process by which policies are formulated or "inextricably intertwined" with "policy-making processes." (*Jordan v. United States Dept. of Justice* (1978) 591

F.2d 753, 774; *Ryan v. Department of Justice* (1979) 474F.Supp. 735, 790.) It is clear from the request for confidentiality that the author of the email wants frank feedback that is not inhibited by the possibility of public disclosure. This email is a perfect example of what the California courts have determined the deliberative process privilege is to protect.

The public interest in disclosure of draft versions of or comments about this document is minimal – the public interest becomes much more tangible with the final product if it is a public record. However, the public policy behind non-disclosure is very strong – allowing government officials a chance to freely discuss policies directly effecting the education of thousands of students in Los Angeles.

8. September 19, 2018, email from Cassy Horton re: For Feedback/Approval by 7pm Today LAAC Collective Renewal Criteria Letter.

9. September 20, 2018, email from Cassy Horton re: CONFIDENTIAL: Sign On by Mon. 9/24 Collective Letter re Charter Renewal Criteria.

These emails from the CCSA asked charter schools, including TAS, to review a draft letter from the Los Angeles charter community requesting the opportunity to collaborate with LAUSD to update charter renewal criteria policy. The first email from September 19th, asks for the recipients to provide feedback and edits. The second includes another draft of the letter for review and consideration.

This deliberation between charter school leaders trying to collaborate in an opportunity to influence LAUSD policy on charter renewal criteria is a major aspect of charter school governance and policy. As one of the emails notes, in the subsequent months to these emails, nearly fifty charter Schools serving more than 25,000 students were up for renewal. The goal was for the charter schools to help LAUSD create a clear, consistent, and transparent process for assessing student performance within the context of charter renewal.

These emails clearly discuss ongoing policy discussions that impact charter school operations. These emails and the attachments again are directly related to the process by which policies are formulated or "inextricably intertwined" with "policy-making processes." (*Id.)* These emails invite frank and uninhibited feedback that needs to occur for governing purposes without public disclosure.

Additionally, beyond these emails being exempted by the deliberative process privilege, they are also exempted pursuant to Government Code Section 6254(a). The Public Records Act exempts

"[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure." Clearly, the emails and the attachments are drafts of a policy letter. The final version of such a letter may be public record, but the drafts that are included in these emails are incomplete and would expose the charter schools' decision-making process in such a way as to discourage candid discussion, thereby limited the public agencies' ability to perform its critical functions. (*Times Mirror Co. v. Superior Court, Supra* at pp. 1339-1342.)

10. **December 6, 2018, email from Jason Rudolph re: [Revised] Los Angeles Advocacy Council: December Meeting**
11. **December 11, 2018, email from Jason Rudolph re: [Revised] Los Angeles Advocacy Council: December Meeting**
12. **March 6, 2019, email from Luis Figueroa re: <Review Req'd> LAAC March Meeting Agenda & Materials**

These emails were to invite members of the Los Angeles Advocacy Council ("LAAC") to a meeting. The emails are short invitations with date, time, and location of the meeting along with the "cc" list of all potential attendees. Much like the Governor's schedule in the *Times Mirror Co.* case or the list of email authors and recipients in the *Labor & Workforce Development Agency case*, these emails included, in the recipient list, the attendees of a policy meeting along with other meeting information. To allow the uninhibited discussion of charter policy and advocacy, the non-disclosure of the names of attendees to this meeting or recipients of the email can be exempted based on the deliberative process privilege. These emails could have been redacted in some fashion, but emails from a private agency (the California Charter Schools Association) providing meeting information is of little public interest or value. Based on the policy and precedent of the deliberative process privilege and the balancing test, these two emails were properly exempted from disclosure to the Petitioner.

13. **January 24, 2019, email from Jason Rudolph re: <Urgent LAAC Call> Alignment on Strategy re: LAUSD Proposed Charter Moratorium Resolution**
14. **January 25, 2019, email from Cristina de Jesus re: <Urgent LAAC Call> Alignment on Strategy re: LAUSD Proposed Charter Moratorium Resolution**
15. **January 25, 2019, email from Cassy Horton re: <Urgent LAAC Call> Alignment on Strategy re: LAUSD Proposed Charter Moratorium Resolution**
16. **January 25, 2019, email from agoldring@laleadership.org re: <Urgent LAAC Call> Alignment on Strategy re: LAUSD Proposed Charter Moratorium Resolution**

17. January 25, 2019, email from Yvette King-Berg re: <Urgent LAAC Call> Alignment on Strategy re: LAUSD Proposed Charter Moratorium Resolution

18. January 25, 2019, email from Cristina de Jesus re: <Urgent LAAC Call> Alignment on Strategy re: LAUSD Proposed Charter Moratorium Resolution

19. January 26, 2019, email from Yvette King-Berg re: <Urgent LAAC Call> Alignment on Strategy re: LAUSD Proposed Charter Moratorium Resolution

Although Petitioner separates these emails to make it appear TAS withheld more records, these seven emails are, in reality, just all one chain.

In early 2019, LAUSD was considering a proposed moratorium on any new charter schools in the District. Such a decision was a major policy shift by LAUSD and effected the charter community significantly. This email chain included considerable discussion surrounding the issue, including strategies to increase attendance at a rally and creation of a slogan. These plans are directly related to the process by which policies are formulated or "inextricably intertwined" with "policy-making processes." (*Jordan v. United States Dept. of Justice, Supra* (1978) 591 F.2d 753*,* 774; *Ryan v. Department of Justice* (1979) 474 F.Supp.735, 790.) The emails include questions and responses to how best to bring people to the rally and what slogans will be most effective to the cause.

The ability for charter school leaders in Los Angeles to express many points of view with each other in an uninhibited and straight-forward fashion to oppose potential resolutions by LAUSD is key to their effective operation and governance of charter schools. Knowing that such communications could become public would clearly freeze the flow of information for the government officials here. Such policy deliberation fits squarely in the deliberative process privilege explained in the *Times Mirror Co.* case.

B. <u>The Court Should Deny, Under These Circumstances, Petitioner's Request for an In Camera Review</u>.

Several references in Petitioner's MPAs in Support of the Writ Petition (including on Page 12, Lines 11 – 12) allude to Petitioner's request that the Court undertake an in-camera review of "the disputed records," and then "order Respondent to disclose all requested responsive public records that are not properly exempted under the CPRA." However, because the trap laid by Petitioner with regard to the thirteen emails he relies on for this argument is specious and incorrect – they are all, indeed, exempt under the deliberative process privilege as set forth above – TAS submits that there is no reasonable basis for the Court to accede to Petitioner's assumed, but unfounded, claim that in camera review is required.

The party – Petitioner or Respondent – who has the burden of proving that a specific document is a public record within the meaning of the PRA is unsettled in California's jurisprudence, at present time. (*See Regents v. Univ. of Calif. v. Superior Court* (2013) 222 Cal.App.4th 383, 398.) However, by engaging in the ill-advised game of "gotcha" with regard to the thirteen emails that Petitioner asserted should have been produced when, for the reasons listed above they were in fact exempt under the PRA, Respondent respectfully requests that the court deny Petitioner's requested relief of expanding the scope of the court's review beyond these records. Thus, while the Court may, in its sole discretion, conduct an in-camera review of disputed documents, pursuant to Government Code § 6259(a), the in-camera review is generally limited to when review of the contents and nature of the records in dispute is necessary to a determination of the duty to disclose them. (*Id.*) Whether in-camera review is necessary to determine a claim of exemption lies in the trial court's sound discretion. (*See Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901; *Coronado Police Officers Ass'n v. Carroll* (2003) 106 Cal.App.4th 1001, 1013.)

IV. CONCLUSION

In conclusion, Petitioner has received over 55,000 records from TAS. Yet he complains that Respondent improperly withheld thirteen emails that he has already received from other resources – each of which is exempt from the PRA. During settlement discussions prior to the commencement of the parties' briefing, TAS asked Petitioner to share the emails he claimed to have obtained from collateral sources so TAS's counsel would be able to engage in a good faith evaluation of potential legitimate issues or clarify the grounds for exemption from disclosure. Instead of participating in this reasonable and rational option, Petitioner elected (in a manner consistent with his established track record) to try to play a game of "gotcha" by presenting them to the Court first. Petitioner claims that the Respondent's withholding of the disputed thirteen emails discussed above proves that TAS has not performed an "adequate search" responsive to each of Petitioner's six Public Records Act requests. This is simply untrue. All thirteen emails that Plaintiff cites are properly withheld pursuant to the deliberative process privilege held to apply to such requests by the California Supreme Court as set forth herein.

Therefore, Petitioner's request for remedies, including an in- in-camera review, is without legal or factual merit and Petitioner's request for a writ of mandate should be denied in its entirety.

Dated: February 19, 2021

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